

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Nicholas J. Cremona
Dean D. Hunt

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Adv. Pro. No. 08-01789 (SMB)

Plaintiff-Applicant,

v.

SIPA LIQUIDATION

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-04427 (SMB)

Plaintiff,

v.

THE OLESKY SURVIVORS TRUST DATED
2/27/84; and CYNTHIA OLESKY
GIAMMARRUSCO, individually and in her
capacity as Trustee of the Olesky Survivors Trust,

Defendants.

**STIPULATION AND ORDER FOR VOLUNTARY DISMISSAL
OF ADVERSARY PROCEEDING WITHOUT PREJUDICE**

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), by and through their counsel, Baker & Hostetler LLP, and The Olesky Survivors Trust Dated 2/27/84; and Cynthia Olesky Giammarrusco, individually and in her capacity as Trustee of the Olesky Survivors Trust, (“Defendants”), by and through their counsel, Frejka, PLLC (collectively, the “Parties”), hereby stipulate and agree to the following:

1. On November 30, 2010, the Trustee filed and served the Complaint against Defendants.
2. On April 17, 2014, Defendants filed and served the Answer to the Complaint on the Trustee.
3. Pursuant to the Settlement Procedures Order, entered by this Court on November 12, 2010 [Dkt. No. 3181], the Parties entered into a Settlement Agreement and Release on December 13, 2016.
4. In accordance with Federal Rule of Bankruptcy Procedure 7041(a)(1)(ii), and Federal Rule of Civil Procedure 41(a)(1), the Parties hereby stipulate to a dismissal without prejudice of the Trustee’s claims against Defendants in the above-captioned adversary proceeding and dismissal of the adversary proceeding without prejudice, subject to the right of the Trustee to move *ex parte* to re-open this adversary proceeding in the event of an uncured default under the terms of the Settlement Agreement. Upon the Trustee’s receipt of the full Settlement Amount as set forth in the Settlement Agreement, and provided there is no default

under the Settlement Agreement, this dismissal shall be deemed with prejudice.

5. The provisions of this Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.

6. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this Stipulation shall be deemed an original.

7. The Bankruptcy Court shall retain jurisdiction over this Stipulation.

Date: March 15, 2017
New York, New York

BAKER & HOSTETLER LLP

By: s/ Nicholas J. Cremona
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Nicholas J. Cremona
Email: ncremona@bakerlaw.com

Attorneys for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff

FREJKA PLLC

By: /s/ Elise S. Frejka
205 East 42nd Street
20th Floor
New York, New York 10017
Telephone: (212) 641-0800
Facsimile: (212) 641-0820
Elise S. Frejka
Email: efrejka@frejka.com

Attorneys for Defendants The Olesky Survivors Trust Dated 2/27/84; and Cynthia Olesky Giannarrusco, individually and in her capacity as Trustee of the Olesky Survivors Trust

Of Counsel:

BAKER & HOSTETLER LLP

811 Main Street, Suite 1100

Houston, Texas 77002-6111

Telephone: (713) 751-1600

Facsimile: (713) 751-1717

Dean D. Hunt

Email: dhunt@bakerlaw.com

Farrell A. Hochmuth

Email: fhochmuth@bakerlaw.com

SO ORDERED:

/s/ STUART M. BERNSTEIN

Hon. Stuart M. Bernstein

United States Bankruptcy Judge

Dated: March 15th, 2017
New York, New York